

THE FOLLOWING IS AN ANALYSIS OF THE SHIMKUS BILL HR-3053

Ray Lutz, 2018-05-08 Citizens Oversight

Main Features:

- Allows non-DOE owned Monitored Retrievable Storage (MRS) sites (“licensed”).
- One MRS site can be developed prior to Yucca Mountain (YM) decision.
- “YM Decision” can be to disapprove YM.
- DOE can start to make improvements to YM before any decision, including site prep, safety, and rail lines, and NRC cannot disapprove them
- Provides that the rail line should go around Las Vegas and not through it.
- Increases the amount of spent fuel which can be stored at YM from 70K to 110K tons heavy metals
- Authorizes expedited informal procedures for any amendments to YM application by NRC.
- YM environmental analysis need not consider alternatives or no-action alternative.
- Bans ocean dumping
- Eliminates on-site tribal representatives from MRS sites, only for repository.
- Acceptance of waste at MRS facility transfers title to the DOE.
- DOE can enter into new contracts and modify existing contracts including expedite acceptance of title, transportation, and storage of waste esp. from shutdown sites.
- MRS site study returned by June 1 2019, for construction of one or more MRS Sites, for civilian nuke plant waste storage, to provide for continuous monitoring, management, and maintenance for the FORESEEABLE FUTURE, provide for retrievability, and safely store it AS LONG AS MAY BE NECESSARY, including any maintenance required.
- Part about licensing by the NRC removed, but I believe they still will be licensing these. [The NRC does not deal with any higher-level decision making and only considers whether a given site is safe. They do not consider whether one site is better than another, safety of transportation to the site, etc.]

- DOE can operate one or more MRS facilities, or non-Federal entity can be licensed to operate a facility and store DOE-owned waste, and the latter will be preferred unless the DOE can do it faster or less expensively.
- MRS Commission to study this storage was abolished.
- Licensed MRS facilities must have approval of Governor of the state, local govts, and affected Indian tribes, and must have final decision on YM, EXCEPT, ONE "Initial" Licensed MRS facility can be authorized and built, but no waste can be stored there until the final YM decision, or until the decision is "imminent."
- Initial MRS facility will accept waste from shut-down nuke plants as a priority.
- Does not affect the Federal responsibility for disposal of high-level radioactive waste.
- DOE may conduct survey and evaluation of MRS sites OR, they may just issue Request for Proposals for MRS agreements and then consider those proposals without doing any survey and eval.
- Sites approved can be "suitable" rather than "the most suitable" (which is really hard to determine.)
- Eliminates the limitation that no MRS sites can be developed in Nevada, and they may now also have benefit agreements, but any such benefit agreement does not express approval of YM by Nevada.
- Benefit agreements are outlined for other areas too. For MRS, \$5 mil / yr prior to fuel receipt, and \$10 mil / yr upon first fuel receipt, and annual after closure. [These should be based also on quantity of spent fuel at the facility].
- Only one benefit agreement per state.
- Monies from benefit agreements can't be used to fight the facility.
- Provides for funds from DOE to states and local govt for training for safe routine transportation and emergency response, from Nuclear Waste Fund.
- Restarts assessment and collection of fees to NWF, but only after a decision is made concerning YM.
- Removes funding of MRS facilities from NWF. [Huh?]
- NWF to be reviewed annually instead of triennially. [Not really necessary.]

- Describes amounts available to DOE from NWF, like 1% of total fund every year for first 25 years. Part that 20% of NWF amounts is available “on the date on which monitoring of the repository during the decommissioning period commences, for waste package and drip shield fabrication activities” This does not make sense to me. I don’t think the repository is ever “decommissioned,” and the waste package and drip shield fabrication would have been done a long time before that.

OPINION OF HR-3053 “Shimkus Bill”

BAD: Authorizes DOE to start working on YM even before any final decision is made, and increases the size of it from 70K to 110K tons. Short-cuts EIR requirements. NRC can’t disapprove project, can only comment on safety of selected project. YM environmental analysis need not consider alternatives or no-action alternative.

MIXED: Monitored Retrievable Storage. Allows ONE initial MRS facility to be built, with priority that it should be licensed, but it can’t be used until the decision on YM is made one way or the other. Removes DOE NWF funding of MRS facilities. Title of spent fuel at MRS’ is transferred to DOE at the MRS facility. DOE will probably not conduct any siting studies and rely on RFP responses, and need only find that the site is “suitable” rather than “most suitable.” Eliminates the limitation that no MRS facilities can be developed in Nevada. Benefit agreements are simplistic, restricted to one per state, and are not based on the amount of fuel stored, and do not start until YM decision is made. MRS requirements include that it must be maintained for the foreseeable future and as long as may be necessary. Eliminates on-site tribal representatives from MRS sites, only the repository will have tribal representation, but any MRS site must be approved by affected tribes, Governor of the state, and local jurisdictions.

GOOD: Adds that they might disapprove YM. Bans ocean dumping. Waste from shutdown plants will have priority at initial MRS over waste from operating plants. Provides money from DOE for training and emergency response. NWF assessment and funding is restarted (good) but only after YM decision is made (bad.)

BOTTOM LINE: Shimkus bill is a mixed bag. It does provide that one MRS site can start to be developed but no fuel can move there and no benefits can be paid unless the DOE makes a final decision on YM. But the decision on YM can be disapproval, and this is the first time this was added to the plan. Could gamble that YM will be disapproved or not used right away and then the interim storage can proceed. If YM is approved, then they will probably wind up building an MRS facility at the mountain, and then we can hope that they would revise the plan for YM. The fuel has to cool for a long time before it is moved into the mountain. By

approving or disapproving YM, then the initial MRS facility can be opened, and we would hope that additional MRS facilities would be built around the country.

OPTIMAL plan would be to continue to study YM and other sites for a permanent repository. YM is not an optimal site for such a deep geologic repository. It was chosen because it was convenient rather than the best. It is in the wrong type of rock, criss-crossed by many fault lines, has water inundation problems, and we disagree with the design philosophy. The drip shield should be incorporated into the canister design and the canisters should be the same ones that are delivered rather than being repackaged. The facility should offer improved retrievability. The long tunnels make it very difficult to deal with degradation of a canister way down the tunnel, and the place will be too hot, and need to be actively ventilated for 150 years, and that is in the DOE's plan. Would prefer that multiple MRS facilities would be authorized to open REGARDLESS of the status of YM, probably in a half-dozen or so locations so they are LOCAL to the sourcing nuke plant but far enough away from water resources. Shimkus bill does ban ocean dumping but why not also ban storage right next to the water's edge?

Recommendation by Citizens Oversight is to block this bill BUT propose an alternative based on the philosophy of HELMS. Authorize development of multiple surface MRS facilities that meet HELMS criteria, provide for transfer of title and responsibility for funding to DOE. Restart the collection of fees from operating plants. Allow research into repository to move forward on slower time scale, to be completed and opened sometime in the next 200 years, after the spent fuel has cooled enough to be successfully emplaced and the facility rapidly closed, or we may decide it is better to keep the waste in dual-wall canisters and allow monitoring. Allow for other repository sites to be entertained by DOE. Base benefit payments on amount of waste stored at a facility, not just on whether it is open for business.

Shimkus bill COULD turn out to be acceptable IF and only IF the final decision on YM is to disapprove it, and we do not waste effort building rail lines to the site, and then enable the approval of multiple MRS facilities. It could work out, but it could also go the other way, and we would wind up having YM approved despite science saying it is not a good site, and since a law is passed it is now "moot," and eventually we would have a disaster on our hands. The technical issues may block this scenario since the waste will be very hot for many decades and will be difficult to load into YM. We would probably wind up with having a surface facility near YM, and later we may be able to influence the design of YM and make it a HELMS underground scenario, if it is used at all.

The following are the affected provisions of the Nuclear Waste Act with markup. [Comments are enclosed in square brackets, like this.] Highlighted Text are passages that are of importance, in my view.

§10101. Definitions

For purposes of this chapter:

- (1) The term "Administrator" means the Administrator of the Environmental Protection Agency.
- (2) The term "affected Indian tribe" means any Indian tribe-
 - (A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;
 - (B) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe; ¹
- (3) The term "atomic energy defense activity" means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:
 - (A) naval reactors development;
 - (B) weapons activities including defense inertial confinement fusion;
 - (C) verification and control technology;
 - (D) defense nuclear materials production;
 - (E) defense nuclear waste and materials by-products management;
 - (F) defense nuclear materials security and safeguards and security investigations; and
 - (G) defense research and development.
- (4) The term "candidate site" means an area, within a geologic and hydrologic system, that is recommended by the Secretary under [section 10132 of this title](#) for site characterization, approved by the President under [section 10132 of this title](#) for site characterization, or undergoing site characterization under [section 10133 of this title](#).
- (5) The term "civilian nuclear activity" means any atomic energy activity other than an atomic energy defense activity.
- (6) The term "civilian nuclear power reactor" means a civilian nuclear powerplant required to be licensed under [section 2133 or 2134\(b\) of this title](#).
- (7) The term "Commission" means the Nuclear Regulatory Commission.
- (8) The term "Department" means the Department of Energy.

(9) The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

(10) The terms "disposal package" and "package" mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.

(11) The term "engineered barriers" means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.

(12) The term "high-level radioactive waste" means-

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

(13) The term "Federal agency" means any Executive agency, as defined in [section 105 of title 5](#).

(14) The term "Governor" means the chief executive officer of a State.

(15) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act ([43 U.S.C. 1602\(c\)](#)).

(16) The term "low-level radioactive waste" means radioactive material that-

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in [section 2014\(e\)\(2\) of this title](#); and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term "Office" means the Office of Civilian Radioactive Waste Management established in [section 10224² of this title](#).

(18) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. **Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.**

(19) The term "reservation" means-

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of [section 1151 of title 18](#); or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term "Secretary" means the Secretary of Energy.

(21) The term "site characterization" means-

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term "siting research" means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term "storage" means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term "Storage Fund" means the Interim Storage Fund established in section 10156(c) ² of this title.

(27) The term "test and evaluation facility" means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term "Waste Fund" means the Nuclear Waste Fund established in [section 10222\(c\) of this title](#).

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under [section 10132\(b\)\(1\)\(B\) of this title](#) on May 27, 1986.

(31) The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term "Negotiator" means the Nuclear Waste Negotiator.

(33) As used in subchapter IV, the term "Office" means the Office of the Nuclear Waste Negotiator established under subchapter IV of this chapter.

(34) The term "monitored retrievable storage facility" means ~~the~~ storage facility described in section 10161(b)(1) of this title.

(35) The term 'MRS agreement' means a cooperative agreement, contract, or other mechanism that the Secretary considers appropriate to support the storage of Department-owned civilian waste in one or more monitored retrievable storage facilities as authorized under section 142(b)(2).

(36) The term 'Department-owned civilian waste' means high-level radioactive waste, or spent nuclear fuel, resulting from civilian nuclear activities, to which the Department holds title.

§10104. Ocean disposal

(a) Effect On Marine Protection, Research, And Sanctuaries Act Of 1972.— Nothing in this chapter shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

(b) Subseabed Or Ocean Water Disposal.—Notwithstanding any other provision of law—

(1) the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste is prohibited; and

(2) no funds shall be obligated for any activity relating to the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste.

§10134. Site approval and construction authorization

(a) Hearings and Presidential recommendation

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 10133 of this title, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 10133 of this title and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

- (C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;
 - (D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;
 - (E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;
 - (F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;
 - (G) such other information as the Secretary considers appropriate; and
 - (H) any impact report submitted under section 10136(c)(2)(B) of this title by the State of Nevada.
- (2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement for such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to ¹require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) Submission of application

If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 10135 of this title, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) Status report on application

Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until ~~the date on which such authorization is granted~~ the date on which the Commission issues a final decision approving or disapproving such application, the

Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of-

- (1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;
- (2) any matters of contention regarding such application; and
- (3) any Commission actions regarding the granting or denial of such authorization.

(d) Commission action

(1) APPLICATIONS FOR CONSTRUCTION AUTHORIZATION.— The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than ~~the expiration of 3 years after the date of the submission of such application~~30 months after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of ~~70~~110,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to part C of this subchapter, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(2) APPLICATIONS TO AMEND.—If the Commission issues a construction authorization for a repository pursuant to paragraph (1) and the Secretary submits an application to amend such authorization, the Commission shall consider the application to amend using expedited, informal procedures, including discovery procedures that minimize the burden on the parties to produce documents. The Commission shall issue a final decision on such application to amend within 1 year after the date of submission of such application, except that the Commission may extend such deadline by not more than 6 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2).

“(3) INFRASTRUCTURE ACTIVITIES.—

“(A) IN GENERAL.—At any time before or after the Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository pursuant to paragraph (1), the Secretary may undertake infrastructure activities that the Secretary considers necessary or appropriate to support construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high-level radioactive waste. Infrastructure activities include safety upgrades, site preparation, the construction of a rail line to connect the Yucca Mountain site with the national rail network (including any facilities to facilitate rail operations), and construction, upgrade, acquisition, or operation of

electrical grids or facilities, other utilities, communication facilities, access roads, and nonnuclear support facilities.

“(B) ENVIRONMENTAL ANALYSIS.—If the Secretary determines that an environmental analysis is required under the National Environmental Policy Act of 1969 with respect to an infrastructure activity undertaken under this paragraph, the Secretary need not consider alternative actions or a no-action alternative. To the extent any other Federal agency must consider the potential environmental impact of such an infrastructure activity, the agency shall adopt, to the extent practicable, any environmental analysis prepared by the Secretary under this subparagraph without further action. Such adoption satisfies the responsibilities of the adopting agency under the National Environmental Policy Act of 1969, and no further action is required by the agency.

“(C) NO GROUNDS FOR DISAPPROVAL.—The Commission may not disapprove, on the grounds that the Secretary undertook an infrastructure activity under this paragraph—

“(i) the issuance of a construction authorization for a repository pursuant to paragraph (1);

“(ii) a license to receive and possess spent nuclear fuel and high-level radioactive waste; or

“(iii) any other action concerning the repository.

(e) Project decision schedule

(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this part. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) Environmental impact statement

(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this chapter shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this part.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this part shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this chapter shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such [environmental impact] statement prepared with respect to the repository to be constructed under this part, **the Nuclear Regulatory Commission need not consider the need for a repository**, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, ~~or~~ nongeologic alternatives to such site, or an action connected or otherwise related to the repository to the extent the action is undertaken outside the geologic repository operations area and does not require a license from the Commission.

§10137. Consultation with States and affected Indian tribes

(a) Provision of information

(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall

immediately suspend all activities in such State authorized by this part, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) Consultation and cooperation

In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to [section 10132\(c\) of this title](#), and in subsequently developing and loading ¹ any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this part, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) Written agreement

Not later than 60 days after (1) the approval of a site for site characterization for such a repository under [section 10132\(c\) of this title](#), or (2) the written request of the State or Indian tribe in any affected State notified under [section 10136\(a\) of this title](#) to the Secretary, whichever,² first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures-

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under [section 10136\(c\) of this title](#) or [section 10138\(b\) of this title](#), as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of

baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) On-site representative

The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this subchapter an opportunity to designate a representative designated with respect to a repository to conduct on-site oversight activities at such site. Reasonable expenses of such representatives shall be paid out of the Waste Fund.

[Means they do not get a representative for MRS site]

§10143. Title to material

(a) In General.— Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a repository ~~constructed under this part~~ or monitored retrievable storage facility shall constitute a transfer to the Secretary of title to such waste or spent fuel. [Support]

(b) Contract Modification.—The Secretary may enter into new contracts or negotiate modifications to existing contracts, with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin, for acceptance of title, subsequent transportation, and storage of such high-level radioactive waste or spent nuclear fuel (including to expedite such acceptance of title, transportation, and storage of such waste or fuel from facilities that have ceased commercial operation) at a monitored retrievable storage facility authorized under subtitle C. [OK but why?]

§10161. Monitored retrievable storage

(a) Findings

The Congress finds that-

- (1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;
- (2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;
- (3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;
- (4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and
- (5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this chapter should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) Submission of proposal by Secretary

(1) On or before June 1, ~~1985~~2019, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, ~~the construction of~~ one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. **Each such facility shall be designed-**

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include-

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of one or more facilities; and the first such facility; (ii) ~~support congressional authorization of the construction of such facility; and~~ (iii) enable completion and operation of such facility as soon as practicable ~~following congressional authorization of such facility;~~ and

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this chapter; ~~and-~~

(E) options to enter into MRS agreements with respect to one or more monitored retrievable storage facilities.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(4) The Secretary shall, not later than 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, publish a request for information to help the Secretary evaluate options for the Secretary to enter into MRS agreements with respect to one or more monitored retrievable storage facilities. [OK]

~~(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.~~

(c) Environmental impact statements

(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.], an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

~~(2) If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b), specifically authorizes construction of a monitored retrievable storage facility, the~~ The requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of ~~such facility~~ a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall **not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).** [No alternative to the very simplistic statement in b1?]

(d) Licensing

~~Any facility authorized pursuant to this section shall be subject to licensing under section 5842(3) of this title. In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).~~

(e) Clarification

~~Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.~~

(f) Impact assistance

~~(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.~~

~~(2) Payments made available to units of general local government under this subsection shall be-~~

~~(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and~~

~~(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.~~

~~(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.~~

~~(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 10222(c) of this title and shall be available only to the extent provided in advance in appropriation Acts.~~

~~(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.~~

(g) Limitation

~~No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 10132 of this title. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.~~

~~(h) Participation of States and Indian tribes~~

~~Any facility authorized pursuant to this section shall be subject to the provisions of sections 10135, 10136(a), 10136(b), 10136(d), 10137, and 10138 of this title. For purposes of carrying out the provisions of this subsection, any reference in sections 10135 through 10138 of this title to a repository shall be considered to refer to a monitored retrievable storage facility.~~

[Not sure if all the licensing part should go away. Someone needs to exercise some decision-making to weigh the various alternative sites. NRC already has provisions for licensing so I believe they will still do that.]

§10166. Notice of disapproval

(a) In general

The selection of a site under section 10165 of this title shall be effective at the end of the period of 60 calendar days beginning on the date of notification under such subsection (f) of such section subsection,¹ unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 10165 of this title shall not be effective except as provided under section 10135(c) of this title.

(b) References

For purposes of carrying out the provisions of this subsection,¹ references in section 10135(c) of this title to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 10136(b) or 10138(a) of this title shall be considered to refer to a notice of disapproval under this section.

§10162. Authorization of monitored retrievable storage

(a) Nullification of Oak Ridge siting proposal

The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 10164 and 10165 of this title, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

~~(b) Authorization~~

~~The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 10163 through 10169 of this title.~~

~~*(b) Authorization.—Subject to the requirements of this subtitle, the Secretary is authorized to—*~~

~~*(1) site, construct, and operate one or more monitored retrievable storage facilities; and [DOE OWNED]*~~

(2) store, pursuant to an MRS agreement, Department-owned civilian waste at a monitored retrievable storage facility for which a non-Federal entity holds a license described in section 143(1). [i.e. licensed instead of owned by DOE]

(c) Priority.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall prioritize storage of Department-owned civilian waste at a monitored retrievable storage facility authorized under subsection (b)(2). [licensed will be preferred over DOE-owned sites.]

“(2) EXCEPTION.—

“(A) DETERMINATION.—Paragraph (1) shall not apply if the Secretary determines that it will be faster and less expensive to site, construct, and operate a facility authorized under subsection (b) (1), in comparison to a facility authorized under subsection (b)(2).

“(B) NOTIFICATION.—Not later than 30 days after the Secretary makes a determination described in subparagraph (A), the Secretary shall submit to Congress written notification of such determination.

[So above, they are adding that the MRS site may be licensed as well as owned by DOE, and moreover, that storage at a licensed site will be the priority.]

§10163. Monitored Retrievable Storage Commission

(a) ¹ Establishment

~~(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives:~~

~~(B) Members of the MRS Commission shall be appointed not later than 30 days after December 22, 1987, from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system:~~

~~(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this chapter. In preparing the report under this subparagraph, the MRS Commission shall-~~

~~(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;~~

~~(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;~~

~~(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and~~

~~(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this chapter, including meeting~~

needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this chapter. Such comparison shall take into consideration the impact on-

(A) repository design and construction;

(B) waste package design, fabrication and standardization;

(C) waste preparation;

(D) waste transportation systems;

(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this chapter to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5.

(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5 at rates and under such rules as the MRS Commission considers reasonable.

(G) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.

CONDITIONS FOR MRS AGREEMENTS.

“SEC. 143. CONDITIONS FOR MRS AGREEMENTS.

“(a) In General.—The Secretary may not enter into an MRS agreement under section 142(b)(2) unless— [IE Licensed]

(1) the monitored retrievable storage facility with respect to which the MRS agreement applies has been licensed by the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

(2) the non-Federal entity that is a party to the MRS agreement has approval to store Department-owned civilian waste at such facility from each of—

(A) the Governor of the State in which the facility is located;

(B) any unit of general local government with jurisdiction over the area in which the facility is located; and

(C) any affected Indian tribe;

(3) except as provided in subsection (b), the Commission has issued a final repository decision; and

(4) the MRS agreement provides that the quantity of high-level radioactive waste and spent nuclear fuel at the site of the facility at any one time will not exceed the limits described in section 148(d)(3) and (4).

(b) Initial Agreement.—

(1) AUTHORIZATION.—The Secretary may enter into one MRS agreement under section 142(b) before the Commission has issued a final repository decision.

(2) FUNDING.—There are authorized to be appropriated to carry out this subsection—

(A) for each of fiscal years 2020 through 2022, the greater of—

(i) \$50,000,000; or

(ii) the amount that is equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year; and

(B) for each of fiscal years 2023 through 2025, the amount that is equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year.

(3) PRIORITY.—

(A) IN GENERAL.—An MRS agreement entered into pursuant to paragraph (1) shall, to the extent allowable under this Act (including under the terms of the standard contract established in section 691.11 of title 10, Code of Federal Regulations), provide for prioritization of the storage of

Department-owned civilian waste that originated from facilities that have ceased commercial operation.

(B) NO EFFECT ON STANDARD CONTRACT.—Nothing in subparagraph (A) shall be construed to amend or otherwise alter the standard contract established in section 691.11 of title 10, Code of Federal Regulations.

(4) CONDITIONS.—

(A) NO STORAGE.—Except as provided in subparagraph (B), the Secretary may not store any Department-owned civilian waste at the initial MRS facility until the Commission has issued a final repository decision.

(B) EXCEPTION.—

(I) FINDING.—The Secretary, in consultation with the Chairman of the Commission, may make a finding that a final repository decision is imminent, which finding shall be updated not less often than quarterly until the date on which the Commission issues a final repository decision.

(ii) STORAGE.—If the Secretary makes a finding under clause (i), the Secretary may store Department-owned civilian waste at the initial MRS facility in accordance with this section.

(iii) NOTICE.—Not later than seven days after the Secretary makes or updates a finding under clause (i), the Secretary shall submit to Congress written notification of such finding.

(iv) REPORTING.—In addition to the requirements of section 114(c), if the Secretary makes a finding under clause (i), the Secretary shall submit to Congress the report described in such section 114(c) not later than 1 month after the Secretary makes such finding and monthly thereafter until the date on which the Commission issues a final repository decision.

(C) NO EFFECT ON FEDERAL DISPOSAL POLICY.—Nothing in this subsection affects the Federal responsibility for the disposal of high-level radioactive waste and spent nuclear fuel, or the definite Federal policy with regard to the disposal of such waste and spent fuel, established under subtitle A, as described in section 111(b).

(c) Definitions.—For purposes of this section:

(1) FINAL REPOSITORY DECISION.—The term ‘final repository decision’ means a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1).

(2) INITIAL MRS FACILITY.—The term ‘initial MRS facility’ means the monitored retrievable storage facility with respect to which an MRS agreement is entered into pursuant to subsection (b)(1).

§10164. Survey

After the MRS Commission submits its report to the Congress under section 10163 of this title, the

(a) In General.— The Secretary may conduct a survey and evaluation of potentially suitable sites for any monitored retrievable storage facility authorized under section 142. In conducting such survey and

evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would-

- (1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter;
- (2) minimize the impacts of transportation and handling of such fuel and waste;
- (3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;
- (4) impose minimal adverse effects on the local community and the local environment;
- (5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;
- (6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate; ~~and~~
- (7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored-; ~~and~~
- (8) be acceptable to State authorities, affected units of local government, and affected Indian tribes.

(b) Request For Proposals.—The Secretary shall issue a request for proposals for an MRS agreement authorized under section 142(b)(2) [licensed] before conducting a survey and evaluation under subsection (a), and shall consider any proposals received in response to such request in making the evaluation.”.

§10165. Site selection

(a) In general

The Secretary may select ~~the~~ site evaluated under section 10164 of this title that the Secretary determines on the basis of available information to be ~~the most~~ suitable for a monitored retrievable storage facility authorized under section 142(b)(1) that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this chapter.

(b) Limitation

The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 10134(a) of this title.

(c) Site specific activities

The Secretary may conduct such site specific activities at each site surveyed under section 10164 of this title as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) Environmental assessment

Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such

selection in accordance with regulations issued by the Secretary implementing such Act [42 U.S.C. 4321 et seq.]. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) Notification before selection

(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) Notification of selection

The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

(g) Limitation

No monitored retrievable storage facility authorized pursuant to section 10162(b) of this title may be constructed in the State of Nevada

[Obviously, if they are serious about YM, the first MRS should be constructed there.]

§10167. Benefits agreement

Once selection of a site for a monitored retrievable storage facility the Secretary intends to construct and operate under section 142(b)(1) is made by the Secretary under section 10165 of this title, or once a non-Federal entity enters into an MRS agreement under section 142(b)(2), the Indian tribe on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a **benefits agreement** with the Secretary under section 10173 of this title.

§10168. Construction authorization

(a) Environmental impact statement

(1) Once the selection of a site is effective under section 10166 of this title, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 10161(b)(1) of this title.

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 10161(b)(1) of this title in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 10162(b) of this title.

(b) Application for construction license

Once the selection of a site for a monitored retrievable storage facility is effective under [section 10166 of this title](#), the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this chapter affecting such facility.

(c) Licensing

Any monitored retrievable storage facility authorized pursuant to [section 10162\(b\)\(1\) of this title](#) shall be subject to licensing under [section 5842\(3\) of this title](#). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in [section 10161\(b\)\(1\) of this title](#).

(d) Licensing conditions

Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that-

(1) construction of such facility may not begin until the Commission ~~has issued a license for the construction of a repository under section 10135(d)~~ has issued a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1) of this title;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission ~~or construction of the repository ceases~~;

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this chapter first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

§10173. Benefits agreements

(a) In general

(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this part may be made available only in accordance with a benefits agreement under this section.

(b) Amendment

A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with [section 10173c of this title](#).

(c) Agreement with Nevada

The Secretary ~~shall~~may offer to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) Monitored retrievable storage

The Secretary ~~shall~~may offer to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) Limitation

Only one benefits agreement for a repository, and only one benefits agreement for a monitored retrievable storage facility per State, may be in effect at any one time. [DISAGREE?]

(f) Judicial review

Decisions of the Secretary under this section are **not subject to judicial review.**

(g) Consent.—The acceptance or use of any of the benefits provided under a benefits agreement under this section by the State of Nevada shall not be considered to be an expression of consent, express or implied, to the siting of a repository in such State.

§10173a. Content of agreements

(a) In general

(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under this subchapter, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under [section 10173 of this title](#) in accordance with the following schedule:

BENEFITS SCHEDULE

(amounts in \$ millions)

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	5	10 <u>15</u> <u>The amount</u>
(B) Upon first spent fuel receipt	10	<u>described in section 302(f)(1)(B)</u>
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20 <u>The amounts</u>

(2) For purposes of this section, the term-

(A) "MRS" means a monitored retrievable storage facility,

(B) "spent fuel" means high-level radioactive waste or spent nuclear fuel, and

(C) "first spent fuel receipt" does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this subchapter before January 1, 1989, shall be made on or after such date.

(6) Except as provided in ~~paragraph (7)~~, ~~paragraphs (7) and (8)~~ the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under [section 10173 of this title](#) covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this chapter and applicable State law.

~~*(8) None of the payments under this section may be used—*~~

~~*(A) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;*~~

~~*(B) for litigation purposes; or*~~

~~*(C) to support multistate efforts or other coalition-building activities inconsistent with the siting, construction, or operation of the monitored retrievable storage facility or repository concerned.*~~

(b) Contents

A benefits agreement under section 10173 of this title shall provide that-

(1) a Review Panel be established in accordance with section 10173b of this title;

~~(2) the State or Indian tribe that is party to such agreement waive its rights under this subchapter to disapprove the recommendation of a site for a repository;~~

(3) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

~~(4) the State or Indian tribe that is party to such agreement participate in the design of the repository or monitored retrievable storage facility and~~ in the preparation of documents required under law or regulation governing the effects of the facility on the public health and safety; and

(5) the State or Indian tribe waive its rights, if any, to impact assistance under sections 10136(c)(1)(B)(ii), 10136(c)(2), 10138(b)(2)(A)(ii), and 10138(b)(3) of this title.

(c) Payments by Secretary

The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund. The signature of the Secretary on a valid benefits agreement under section 10173 of this title shall constitute a commitment by the United States to make payments in accordance with such agreement.

“SEC. 172A. COVERED UNITS OF LOCAL GOVERNMENT.

“(a) Benefits Agreement.—Not earlier than 1 year after the date of enactment of this section, the Secretary may enter into a benefits agreement with any covered unit of local government concerning a repository for the acceptance of high-level radioactive waste or spent nuclear fuel in the State of Nevada.

“(b) Content Of Agreements.—In addition to any benefits to which a covered unit of local government is entitled under this Act, the Secretary shall make payments to such covered unit of local government that is a party to a benefits agreement under subsection (a) to mitigate impacts described in section 175(b).

“(c) Payments From Waste Fund.—The Secretary shall make payments to a covered unit of local government under a benefits agreement under this section from the Waste Fund.

“(d) Restriction On Use.—None of the payments made pursuant to a benefits agreement under this section may be used—

“(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

“(2) for litigation purposes; or

“(3) to support multistate efforts or other coalition-building activities inconsistent with the siting, construction, or operation of the repository.

“(e) Consent.—The acceptance or use of any of the benefits provided under a benefits agreement under this section by any covered unit of local government shall not be considered to be an expression of consent, express or implied, to the siting of a repository in the State of Nevada.

“(f) Covered Unit Of Local Government Defined.—In this section, the term ‘covered unit of local government’ means—

“(1) any affected unit of local government with respect to a repository; and

“(2) any unit of general local government in the State of Nevada.”.

§10173c. Termination

(a) In general

The Secretary may terminate a benefits agreement under this subchapter ~~if-~~

(1) ~~concerning a repository or a monitored retrievable storage facility, if~~ the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this chapter; or

(2) ~~the Secretary determines that the Commission cannot license the facility within a reasonable time concerning a repository, if the Commission issues a final decision disapproving the issuance of a construction authorization for a repository under section 114(d)(1)~~

(b) Termination by State or Indian tribe

A State, covered unit of local government (as defined in section 172A) or Indian tribe may terminate a benefits agreement under this ~~subchapter~~ title ~~only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this chapter or the Secretary determines that the Commission cannot license the facility within a reasonable time.~~

(1) concerning a repository or a monitored retrievable storage facility, if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act; or

“(2) concerning a repository, if the Commission issues a final decision disapproving the issuance of a construction authorization for a repository under section 114(d)(1).

(c) Decisions of Secretary

Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.

§10175. Transportation

(a) Packaging

No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under part A or under part C except in packages that have been certified for such purpose by the Commission.

(b) Advance notification

The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under part A or under part C.

(c) Training for public safety officials

Training And Assistance.—

(1) TRAINING.—

The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under part A or under part C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations.

(2) ASSISTANCE.—The Secretary shall, subject to the availability of appropriations, provide in-kind, financial, technical, and other appropriate assistance, for safety activities related to the transportation of high-level radioactive waste or spent nuclear fuel, to any entity receiving technical assistance or funds under paragraph (1).

(3) SOURCE OF FUNDING.—The Waste Fund shall be the source of funds for work carried out under this subsection.

§10222. Nuclear Waste Fund

(a) Contracts

(1) In the performance of his functions under this chapter, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to paragraphs (2)-~~and (3)~~, (3), and (4) sufficient to offset expenditures described in subsection (d).

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after January 7, 1983, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after January 7, 1983, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level

radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to [section 10143 of this title](#), to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c).¹ In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

(4) ASSESSMENT, COLLECTION, AND PAYMENT OF FEES.—

“(A) ASSESSMENT OF FEES.—Not later than 180 days after ~~January 7, 1983~~ the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, the Secretary shall establish procedures for the ~~collection and payment~~ assessment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether ~~collection of the fees~~ such amount will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues ~~are being collected~~ will result from such amounts, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to ~~insure~~ ensure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after the date that is 180 days after the date of such transmittal. ~~a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary’s proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 6421 of this title.~~”

(B) COLLECTION AND PAYMENT OF FEES.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of Nuclear Waste Policy Amendments Act of 2017, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3), or adjusted pursuant to subparagraph (A).”

“(ii) LIMITATION ON COLLECTION.—The Secretary ~~may not collect a fee~~ established under paragraph (2), including a fee established under paragraph (2) and adjusted pursuant to subparagraph (A)—”

“(I) ~~until~~ the date on which the Commission issues a ~~final decision approving or disapproving~~ the issuance of a construction authorization for a ~~repository~~ under section 114(d)(1); and

“(II) after such date, in an amount that will cause the total amount of fees collected under this subsection in any fiscal year to exceed 90 percent of the amounts appropriated for that fiscal year for purposes described in subsection (d).

“(iii) PAYMENT OF FULL AMOUNTS.—Notwithstanding the noncollection of a fee by the Secretary pursuant to clause (ii) in any fiscal year, a person who has entered into a contract with the Secretary under this subsection shall pay any uncollected amounts when determined necessary by the Secretary, subject to clause (ii), for purposes described in subsection (d)

(5) Contracts entered into under this section shall provide that-

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subchapter.¹

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) Advance contracting requirement

(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of [section 2133 or 2134 of this title](#) unless-

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under [section 2133 or 2134 of this title](#) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in [section 101 or 102 of title 5](#)) may be disposed of by the Secretary in any repository constructed under this chapter unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than-

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in [section 101 or 102 of title 5](#) may be disposed of by the Secretary in any repository constructed under this chapter unless such department transfers to the Secretary, for deposit in

the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) Establishment of Nuclear Waste Fund

There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of-

- (1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Waste Fund immediately upon their realization;
- (2) any appropriations made by the Congress to the Waste Fund; and
- (3) any unexpended balances available on January 7, 1983, for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) Use of Waste Fund

The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under subchapters I and II, including-

- (1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository, ~~monitored,² retrievable storage facility³~~ or test and evaluation facility constructed under this chapter;
- (2) the conducting of nongeneric research, development, and demonstration activities under this chapter;
- (3) the administrative cost of the radioactive waste disposal program;
- (4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository, ~~to be stored in a monitored,² retrievable storage site³~~ or to be used in a test and evaluation facility;
- (5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site, ~~a monitored,² retrievable storage site³~~ or a test and evaluation facility site and necessary or incident to such repository, ~~monitored,² retrievable storage facility³~~ or test and evaluation facility; ~~and~~
- (6) the provision of assistance to States, units of general local government, and Indian tribes under sections 10136, 10138, and 10199 of this title; ~~and~~
- (7) payments under benefits agreements for a repository entered into under section 170 or 172A.

No amount may be expended by the Secretary under this subchapter ¹ for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) Administration of Waste Fund

(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget ~~triennially~~ annually along with the budget of the Department of Energy submitted at such time in accordance with [chapter 11 of title 31](#). The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States-

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of [chapter 15 of title 31](#).

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subchapter,¹ the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under [chapter 31 of title 31](#), and the purposes for which securities may be issued under such Act ¹ are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and

sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(f) Availability Of Certain Amounts.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, for the purposes described in subsection (d) that are specified in subparagraphs (A) through (E) of this paragraph, the following amounts from the Waste Fund shall be available to the Secretary without further appropriation:

“(A) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each of the 25 years thereafter, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

“(B) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.

“(C) An amount equal to 0.1 percent of 2017 Waste Fund amounts, on the date that is one year after the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each year thereafter until closure of the repository, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.

“(D) An amount equal to 20 percent of 2017 Waste Fund amounts, on the date on which monitoring of the repository during the decommissioning period commences, for waste package and drip shield fabrication activities.

“(E) An amount equal to the amount of any fee collected pursuant to subsection (a)(3) after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, on the date on which such fee is collected, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

“(2) 2017 WASTE FUND AMOUNTS.—For purposes of this subsection, the term ‘2017 Waste Fund amounts’ means the amounts in the Waste Fund on the date of enactment of the Nuclear Waste Policy Amendments Act of 2017

§10224. Office of Civilian Radioactive Waste Management

(a) Establishment

There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under [section 5315](#) of title 5.

(b) Functions of Director

~~The Director of the Office shall be responsible for carrying out the functions of the Secretary under this chapter, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.~~

Director.—

(1) FUNCTIONS.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act. The Director of the Office shall report directly to the Secretary.

(2) QUALIFICATIONS.—The Director of the Office shall be appointed from among persons who have extensive expertise and experience in organizational and project management.

(3) TENURE.—The Director of the Office may serve not more than two 5-year terms.

(4) SERVICE DURING INTERIM PERIOD.—Upon expiration of the Director's term, the Director may continue to serve until the earlier of—

(A) the date on which a new Director is confirmed; or

(B) the date that is one year after the date of such expiration.

(5) REMOVAL.—The President may remove the Director only for inefficiency, neglect of duty, or malfeasance in office. If the President removes the Director, the President shall submit to Congress a statement explaining the reason for such removal.

(c) Annual report to Congress

The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) Audit by GAO

If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the Government Accountability Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

§10144. Consideration of effect of acquisition of water rights

The Secretary shall give full consideration to whether the development, construction, and operation of a repository may require any purchase or other acquisition of water rights that will have a significant adverse effect on the present or future development of the area in which such repository is located. The Secretary shall mitigate any such adverse effects to the maximum extent practicable.

TITLE II—PERMANENT REPOSITORY

SEC. 201. LAND WITHDRAWAL, JURISDICTION, AND RESERVATION.

(a) Land Withdrawal, Jurisdiction, And Reservation.—

(1) LAND WITHDRAWAL.—Subject to valid existing rights and except as provided otherwise in this section, the lands described in subsection (c) are withdrawn permanently from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, and the mining laws.

(2) JURISDICTION.—Except as otherwise provided in this section, jurisdiction over the withdrawal is vested in the Secretary. There are transferred to the Secretary the lands within the withdrawal under the jurisdiction of the Secretary concerned on the effective date described in subsection (j)(1).

(3) RESERVATION.—The withdrawal is reserved for use by the Secretary for development, preconstruction testing and performance confirmation, licensing, construction, management and operation, monitoring, closure, postclosure, and other activities associated with the disposal of high-level radioactive waste and spent nuclear fuel under the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10101 et seq.](#)).

(b) Revocation And Modification Of Public Land Orders And Rights-Of-Way.—

(1) PUBLIC LAND ORDER REVOCATION.—Public Land Order 6802 of September 25, 1990, as extended by Public Land Order 7534, and any conditions or memoranda of understanding accompanying those land orders, are revoked.

(2) RIGHT-OF-WAY RESERVATIONS.—Project right-of-way reservations N-48602 and N-47748 of January 2001, are revoked.

(c) Land Description.—

*(1) BOUNDARIES.—The lands and interests in lands withdrawn and reserved by this section comprise the approximately 147,000 acres of land in Nye County, Nevada, as generally depicted on the **Yucca Mountain Project Map**, YMP-03-024.2, entitled “Proposed Land Withdrawal” and dated July 21, 2005.*

(2) LEGAL DESCRIPTION AND MAP.—Not later than 120 days after the date of enactment of this Act, the Secretary of the Interior shall—

(A) publish in the Federal Register a notice containing a legal description of the withdrawal; and

(B) file copies of the maps described in paragraph (1) and the legal description of the withdrawal with the Congress, the Governor of the State of Nevada, and the Archivist of the United States.

(3) TECHNICAL CORRECTIONS.—The maps and legal description referred to in this subsection have the same force and effect as if they were included in this section. The Secretary of the Interior may correct clerical and typographical errors in the maps and legal description.

(d) Relationship To Other Reservations.—The provisions of subtitle A of title XXX of the Military Lands Withdrawal Act of 1999 (sections 3011–3023 of [Public Law 106–65](#)) and of Public Land Order 2568 do not apply to the lands withdrawn and reserved for use by the Secretary under subsection (a). This Act does not apply to any other lands withdrawn for use by the Department of Defense under subtitle A of title XXX of the Military Lands Withdrawal Act of 1999.

(e) Management Responsibilities.—

(1) GENERAL AUTHORITY.—The Secretary shall manage the lands withdrawn by subsection (a) consistent with the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1701](#) et seq.), this section, and other applicable law. The Secretary shall consult with the Secretary concerned in discharging that responsibility.

(2) MANAGEMENT PLAN.—

(A) DEVELOPMENT.—The Secretary, after consulting with the Secretary concerned, shall develop a management plan for the use of the withdrawal. Within 3 years after the date of enactment of this Act, the Secretary shall submit the management plan to the Congress and the State of Nevada.

(B) PRIORITY OF YUCCA MOUNTAIN PROJECT-RELATED ISSUES.—Subject to subparagraphs (C) and (D), any use of the withdrawal for activities not associated with the Project is subject to conditions and restrictions that the Secretary considers necessary or desirable to permit the conduct of Project-related activities.

(C) DEPARTMENT OF THE AIR FORCE USES.—The management plan may provide for the continued use by the Department of the Air Force of the portion of the withdrawal within the Nellis Air Force Base Test and Training Range under terms and conditions on which the Secretary and the Secretary of the Air Force agree concerning Air Force activities.

(D) OTHER NON-YUCCA-MOUNTAIN-PROJECT USES.—The management plan shall provide for the maintenance of wildlife habitat and shall provide that the Secretary may permit non-Project-related uses that the Secretary considers appropriate, including domestic livestock grazing and hunting and trapping in accordance with the following requirements:

(i) GRAZING.—The Secretary may permit grazing to continue where established before the effective date described in subsection (j)(1), subject to regulations, policies, and practices that the Secretary, after consulting with the Secretary of the Interior, determines to be necessary or appropriate. The management of grazing shall be conducted in accordance with applicable grazing laws and policies, including—

(I) the Act commonly known as the “Taylor Grazing Act” ([43 U.S.C. 315](#) et seq.);

(II) title IV of the Federal Land Policy and Management Act of 1976 ([43 U.S.C. 1751](#) et seq.); and

(III) the Public Rangelands Improvement Act of 1978 ([43 U.S.C. 1901](#) et seq.).

(ii) HUNTING AND TRAPPING.—The Secretary may permit hunting and trapping within the withdrawal where established before the effective date described in subsection (k)(1), except that the Secretary, after consulting with the Secretary of the Interior and the State of Nevada, may designate zones where, and establish periods when, no hunting or trapping is permitted for reasons of public safety, national security, administration, or public use and enjoyment.

(E) MINING.—

(i) IN GENERAL.—Except as provided in clause (ii), surface or subsurface mining or oil or gas production, including slant drilling from outside the boundaries of the withdrawal, is not permitted at any time on lands on or under the withdrawal. The Secretary of the Interior shall evaluate and adjudicate the validity of all unpatented mining claims on the portion of the withdrawal that, on the date of enactment of this Act, was under the control of the Bureau of Land Management. The Secretary shall provide just compensation for the acquisition of any valid property right.

(ii) CIND-R-LITE MINE.—Patented Mining Claim No. 27–83–0002, covering the Cind–R–Lite Mine, shall not be affected by establishment of the withdrawal set forth in subsection (a)(1). In that event, the Secretary shall provide just compensation.

(F) **LIMITED PUBLIC ACCESS**.—The management plan may provide for limited public access to the portion of the withdrawal under Bureau of Land Management control on the effective date described in subsection (j)(1). Permitted uses may include continuation of the Nye County Early Warning Drilling Program, utility corridors, and other uses the Secretary, after consulting with the Secretary of the Interior, considers consistent with the purposes of the withdrawal.

(3) CLOSURE.—If the Secretary, after consulting with the Secretary concerned, determines that the health and safety of the public or the common defense and security require the closure of a road, trail, or other portion of the withdrawal, or the airspace above the withdrawal, the Secretary may effect and maintain the closure and shall provide notice of the closure.

(4) IMPLEMENTATION.—The Secretary and the Secretary concerned shall implement the management plan developed under paragraph (2) under terms and conditions on which they agree.

(f) Immunity.—The United States and its departments and agencies shall be held harmless and shall not be liable for damages to persons or property suffered in the course of any mining, mineral leasing, or geothermal leasing activity conducted on the withdrawal.

(g) Land Acquisition.—The Secretary may acquire lands and interests in lands within the withdrawal. Those lands and interests in lands may be acquired by donation, purchase, lease, exchange, easement, rights-of-way, or other appropriate methods using donated or appropriated funds. The Secretary of the Interior shall conduct any exchange of lands within the withdrawal for Federal lands outside the withdrawal.

(h) Material Requirements.—Notwithstanding any other provision of law, no Federal, State, Interstate, or local requirement, either substantive or procedural, that is referred to in section 6001(a) of the Solid Waste Disposal Act ([42 U.S.C. 6961\(a\)](#)) applies with respect to any material—

- (1) as such material is transported to a repository for disposal at such repository; or
(2) as, or after, such material is disposed of in a repository.

(i) *Definitions.*—

(1) **NUCLEAR WASTE POLICY ACT OF 1982 DEFINITIONS.**—For purposes of this section, the terms “disposal”, “high-level radioactive waste”, “repository”, “Secretary”, and “spent nuclear fuel” have the meaning given those terms in section 2 of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10101](#)).

(2) **OTHER DEFINITIONS.**—For purposes of this section—

(A) the term “withdrawal” means the geographic area consisting of the land described in subsection (c);

(B) the term “Secretary concerned” means the Secretary of the Air Force or the Secretary of the Interior, or both, as appropriate; and

(C) the term “Project” means the Yucca Mountain Project.

(j) *Effective Date.*—

(1) **IN GENERAL.**—Except as provided in paragraph (2), this section shall take effect on the date on which the Nuclear Regulatory Commission issues a final decision approving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10134\(d\)](#)) (as so designated by this Act).

(2) **EXCEPTIONS.**—Subsections (c), (e)(2)(A), (h), (i), and (j) shall take effect on the date of enactment of this Act.

SEC. 203. PENDING REPOSITORY LICENSE APPLICATION.

Nothing in this Act or the amendments made by this Act shall be construed to require the Secretary to amend or otherwise modify an application for a construction authorization described in section 114(d) of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10134\(d\)](#)) pending as of the date of enactment of this Act.

SEC. 204. LIMITATION ON PLANNING, DEVELOPMENT, OR CONSTRUCTION OF DEFENSE WASTE REPOSITORY.

(a) *Limitation.*—The Secretary of Energy may not take any action relating to the planning, development, or construction of a defense waste repository until the date on which the Nuclear Regulatory Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10134\(d\)](#)) (as so designated by this Act).

(b) *Definitions.*—In this section—

(1) the terms “atomic energy defense activity”, “high-level radioactive waste”, “repository”, and “spent nuclear fuel” have the meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10101](#)); and

(2) the term “defense waste repository” means the repository for high-level radioactive waste and spent nuclear fuel derived from the atomic energy defense activities of the Department of Energy, as described in the draft plan of the Department titled “Draft Plan for a Defense Waste Repository” published on December 16, 2016.

SEC. 205. SENSE OF CONGRESS REGARDING TRANSPORTATION ROUTES.

It is the sense of Congress that the Secretary of Energy should consider routes for the transportation of spent nuclear fuel or high-level radioactive waste transported by or for the Secretary under subtitle A of title I of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10131](#) et seq.) to the Yucca Mountain site that, to the extent practicable, avoid Las Vegas, Nevada.

SEC. 601. CERTAIN STANDARDS AND CRITERIA.

(a) *Generally Applicable Standards And Criteria.*—

(1) *ENVIRONMENTAL PROTECTION AGENCY STANDARDS.*—

(A) *DETERMINATION AND REPORT.*—Not later than 2 years after the Nuclear Regulatory Commission has issued a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10134\(d\)](#)) (as so designated by this Act), the Administrator of the Environmental Protection Agency shall—

(i) determine if the generally applicable standards promulgated under section 121(a) of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10141\(a\)](#)) should be updated; and

(ii) submit to Congress a report on such determination.

(B) *RULE.*—If the Administrator of the Environmental Protection Agency determines, under subparagraph (A), that the generally applicable standards promulgated under section 121(a) of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10141\(a\)](#)) should be updated, the Administrator, not later than 2 years after submission of the report under subparagraph (A)(ii), shall, by rule, promulgate updated generally applicable standards under such section.

(2) *COMMISSION REQUIREMENTS AND CRITERIA.*—Not later than 2 years after the Administrator of the Environmental Protection Agency promulgates updated generally applicable standards pursuant to paragraph (1)(B), the Commission shall, by rule, promulgate updated technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 ([42 U.S.C. 10141\(b\)](#)) as necessary to be consistent with such updated generally applicable standards.

(b) *Site-Specific Standards And Criteria.*—Nothing in this section shall affect the standards, technical requirements, and criteria promulgated by the Administrator of the Environmental Protection Agency and the Nuclear Regulatory Commission for the Yucca Mountain site under section 801 of the Energy Policy Act of 1992 ([42 U.S.C. 10141](#) note).

SEC. 605. WEST LAKE LANDFILL.

Not later than one year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report containing the final remedy to be implemented at the West Lake Landfill and the expected timeline for implementation of such final remedy.

SEC. 607. SENSE OF CONGRESS REGARDING STORAGE OF NUCLEAR WASTE NEAR THE GREAT LAKES.

It is the Sense of Congress that the Governments of the United States and Canada should not allow permanent or long-term storage of spent nuclear fuel or other radioactive waste near the Great Lakes.